

## 46 Am. Jur. 2d Judges § 164

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### Judges

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### IX. Disqualification to Act in Particular Case


#### C. Remedies and Procedure

##### 1. In General

## § 164. Duty of judge to disqualify self

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  39, 50, 51(1)

### Forms

Forms relating to judge disqualifying, transferring case, or designating a pro tem judge, generally, see Am. Jur. Pleading and Practice Forms, Judges [[Westlaw®\(r\) Search Query](#)]

A judge has a duty to self-disqualify as soon as the judge is aware that legal grounds therefor exist.<sup>1</sup> For instance, judges having knowledge of a ground for self-disqualification must disqualify themselves on their own motion, regardless of a request to do so.<sup>2</sup> The prejudice must be such that the defendant cannot receive a trial uninfluenced by the court's prejudgment,<sup>3</sup> a decision left to the court's reasonable discretion.<sup>4</sup> The judge need not state the reasons for the recusal.<sup>5</sup>

### Observation:

All judges have a duty to recuse when the situation warrants but they also have an equal duty to sit when the facts do not justify doing otherwise; injustice occurs when one makes the wrong decision either way, and injustice also would occur if litigants could manipulate the makeup of the court.<sup>6</sup>

A judge may self-disqualify where the judge harbors actual prejudice in the case<sup>7</sup> or has been personally attacked,<sup>8</sup> whenever the judge's conduct is not above reproach;<sup>9</sup> or where disciplinary charges related to the case have been filed against the judge.<sup>10</sup>

Under the code of judicial conduct, a judge must self-disqualify in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:<sup>11</sup>

- (1) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding;
- (2) the judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is (a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party; (b) acting as a lawyer in the proceeding; (c) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or (d) likely to be a material witness in the proceeding;
- (3) the judge knows that the judge, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or is a party to the proceeding;
- (4) the judge knows or learns by means of a timely motion that a party, a party's lawyer, or the law firm of a party's lawyer has within the previous certain number of years made aggregate contributions to the judge's campaign in an amount that is greater than an amount that is reasonable and appropriate for an individual or an entity;
- (5) the judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy; or
- (6) the judge (a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association; (b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy; (c) was a material witness concerning the matter; or (d) previously presided as a judge over the matter in another court.

There are four categories of cases in which, as an objective matter, recusal would be required in order to satisfy due process when a judge has a direct, personal, substantial pecuniary interest in the case; when a judge has an indirect financial interest in the case's outcome; when a judge issues a contempt citation in one case and proceeds to try the contempt citation; and, in rare instances, when a litigant donates to a judge's campaign for office.<sup>12</sup>

Even when recusal is not required, a judge may self-recuse.<sup>13</sup> A judge may voluntarily self-disqualify from presiding over a hearing for any reason at all.<sup>14</sup>

An appellate judge may properly self-recuse only from consideration of a particular issue in a case and may consider other issues severable from that requiring recusal.<sup>15</sup>

Sua sponte recusal is unnecessary if the parties consent to the judge hearing the case.<sup>16</sup> Also, there is no duty for a trial judge to sua sponte recuse absent a violation of a specific statutory standard or canon of the code of judicial conduct which is not waived by a party after disclosure.<sup>17</sup>

It is as much the duty of a trial judge not to self-recuse when there are insufficient grounds to do so as it is to self-recuse when there are grounds to do so.<sup>18</sup> In other words, an assigned judge has an obligation not to self-disqualify when there is no occasion to do so.<sup>19</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

When there is no reasonable basis for recusal, a judge is as much obligated not to recuse when it is not necessary as the judge is obliged to recuse when it is necessary. *Schafer v. Schafer*, 2019 ME 101, 210 A.3d 842 (Me. 2019).

While trial justice is duty-bound to recuse himself if he is unable to render a fair or an impartial decision in a particular case, the trial justice has as great of an obligation not to disqualify himself when there is no sound reason to do so. *State v. Segrain*, 252 A.3d 1255 (R.I. 2021).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 *Pope v. State*, 257 Ga. 32, 354 S.E.2d 429 (1987).  
As to judge's responsibility to disclose any potential conflict, see § 80.  
As to self-recusal in federal court, see Am. Jur. 2d, Federal Courts § 42.
- 2 *Bailey v. Duling*, 2013 SD 15, 827 N.W.2d 351 (S.D. 2013).
- 3 *Vautrot v. West*, 272 Ga. App. 715, 613 S.E.2d 19 (2005).
- 4 *In re Marriage of Goellner*, 770 P.2d 1387 (Colo. App. 1989).
- 5 *State ex rel. Mosshammer v. Allen* Superior Court No. 3, 246 Ind. 366, 206 N.E.2d 139 (1965).
- 6 *Robinson Nursing and Rehabilitation Center, LLC v. Phillips*, 2016 Ark. 388, 502 S.W.3d 519 (2016).
- 7 *Flowers v. State*, 738 N.E.2d 1051 (Ind. 2000).
- 8 *Cooke v. U.S.*, 267 U.S. 517, 45 S. Ct. 390, 69 L. Ed. 767 (1925).
- 9 *In Interest of Morrow*, 400 Pa. Super. 339, 583 A.2d 816 (1990).
- 10 *State v. Hunt*, 147 Vt. 631, 527 A.2d 223 (1987).
- 11 Model Code of Judicial Conduct Canon 2, Rule 2.11(A).
- 12 *State v. Sawyer*, 297 Kan. 902, 305 P.3d 608 (2013).
- 13 *Scheehle v. Justices of the Supreme Court of the State of Arizona*, 211 Ariz. 282, 120 P.3d 1092 (2005).
- 14 *Woods v. Sanders*, 150 Idaho 53, 244 P.3d 197 (2010).
- 15 *Florida Patient's Compensation Fund v. Von Stetina*, 474 So. 2d 783 (Fla. 1985).
- 16 *State v. Ortiz*, 83 Conn. App. 142, 848 A.2d 1246 (2004).  
As to waiver of disqualification by consent, see § 206.
- 17 *Lacy v. Lacy*, 320 Ga. App. 739, 740 S.E.2d 695 (2013).
- 18 *S.E.C. v. Bilzerian*, 729 F. Supp. 2d 19 (D.D.C. 2010); *Alexander v. State*, 276 Ga. App. 288, 623 S.E.2d 160 (2005).

